



# County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA  
Chief Executive Officer

December 14, 2011

To: Supervisor Zev Yaroslavsky, Chairman  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

Board of Supervisors  
GLORIA MOLINA  
First District

MARK RIDLEY-THOMAS  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

## RESPONSE TO BOARD MOTION RECOMMENDATIONS OF THE OFFICE OF INDEPENDENT REVIEW TO FACILITATE TIMELINES FOR REPORTING THE DISCLOSURE OF CHILD FATALITY INFORMATION UNDER SB 39

On August 31, 2010, on motion of Supervisors Mark Ridley-Thomas and Don Knabe, your Board directed the Chief Executive Office (CEO), to work with the Department of Children and Family Services (DCFS), the Executive Office of the Board of Supervisors, County Counsel, Children's Special Investigations Unit (CSIU), and the Office of Independent Review (OIR) to: 1) evaluate and recommend a single County office that should be charged with overseeing SB 39 compliance, including assembling, assessing, and evaluating information necessary to make an SB 39 determination; 2) develop a process for coordinating the assembly, assessment, and production of information necessary for an independent entity to evaluate and make an informed SB 39 determination; 3) develop a process to coordinate and collect the views of the District Attorney and law enforcement on the materials to be disclosed or not disclosed pursuant to an SB 39 determination; 4) develop a timetable and process for implementing OIR recommendations contained in the OIR's August 30, 2010 Report; and 5) provide a written report within 30 days with quarterly reports to the Board on implementation progress. The 30-day report status update was delivered to your Board on September 30, 2010.

This is to provide you a status report on your Board's directive on implementation of the recommendations made by the OIR to facilitate the timelines for reporting the disclosure of child fatality information under SB 39 and the development of a process for reporting and overseeing SB 39 compliance.

*"To Enrich Lives Through Effective And Caring Service"*

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The CEO convened a workgroup consisting of DCFS, County Counsel, CSIU, and OIR to review your Board's requests and the OIR's recommendations and to develop and implement processes to effectuate them. The OIR made 11 recommendations, and this report provides your Board the process by which all the requests were implemented as indicated below and summarized in the Attachment.

I. County Office for Overseeing SB 39 Compliance

Under SB 39, a County's child welfare agency is charged with the responsibility for making the reasonable suspicion determination that the fatality was caused by abuse or neglect, and is one of three entities responsible for making the determination that the abuse or neglect led to the child's death. Law enforcement and the Coroner are the other two agencies. In Los Angeles, DCFS is the County's child welfare agency and has the expertise to make these determinations.

The legal standard for the initial release of information, understood in light of other statutes and the California Department of Social Services' (CDSS) regulations which implement SB 39, require that DCFS make the initial determination of reasonable suspicion. Findings made by any of the three entities may trigger the second broader release by determining that alleged abuse or neglect has resulted in a child's death. However, applicable law indicates that DCFS is the County department responsible for SB 39 processing.

Currently, SB 39 determinations and compliance are being performed within DCFS' Risk Management Division (RMD) as part of its regular duties. To adopt a broader approach to determination of connectivity, to strengthen existing operations, and to facilitate timely determination and reporting, the workgroup recommends that a separate section within the RMD be established to perform all SB 39 functions.

Due to the various legal elements associated with SB 39 compliance and the potential disconnect between the applicable law and CDSS regulations, we also recommend that County Counsel continue to provide assistance to DCFS in the documentation and implementation of protocols and processes to ensure that the County is in full compliance with SB 39.

The CEO and DCFS have assessed the operational requirements for the proposed section to support this function and during the FY 2011-12 Budget process added positions to the DCFS Budget for which existing vacancies could not absorb the new workload. The existing vacancies which were identified and new positions added will be combined to create the SB 39 section within the Risk Management Division. The dedicated functions of this section will include: 1) research and review of all child fatalities and near fatalities; 2) track determinations through the Critical Incident Fatality

Tracking (CIFT) database; 3) interface with CDSS on reporting and reconciliation of all child fatalities and near fatalities; 4) communicate with minor's counsel, appropriate law enforcement and the DA; 5) compile and redact documents; 6) follow-up on a monthly basis on any cases for which objections were received, and; 7) report and release information on reasonable suspicion and causal determinations.

The enactment of SB 39 resulted in an increase in reporting duties of local counties. Since, the Bill imposed a State-mandated local program, the California Constitution requires the State to reimburse local counties for certain costs mandated by the State. As a result, DCFS will submit to the Auditor-Controller any increased costs for which it has not received State funding in order to receive SB 90 reimbursement consideration.

## II. SB 39 Evaluation and Determination

In October 2010, a determination form was developed in consultation with County Counsel and was immediately implemented. The form allows the analyst to clearly detail the analysis made in concluding the SB 39 determination in every child fatality reported to the Department.

Further, on October 22, 2010, Procedural Guide 0500-501.40, Release of Case Record Information Regarding a Child Fatality, dated March 24, 2010, was revised at the request of County Counsel to clarify CDSS Manual of Policies and Procedures Division Section 31-502-31-502.48.

Finally, the DCFS SB 39 Section will be responsible for coordinating the assembly, assessment and production of information. The SB 39 Section will also collaborate with County Counsel to document the process and protocol required to comply with the reporting and legal requirements.

## III. Process to Coordinate District Attorney and Law Enforcement Clearances

Since October 2010, a SB 39 point person has been designated with the District Attorney's Office, Michele L. Daniels, Head Deputy DA of Family Violence Division and Michael Gargiulo, Assistant Head Deputy of Family Violence Division, Los Angeles Sheriff's Department, Lt. Wes Sutton of Sheriff Homicide Bureau, and Los Angeles Police Department, Tina Certeza, Det. of Abused Child Section. The Risk Management Division has maintained regular communication with these entities in the implementation of SB 39 with very favorable, time-sensitive results.

Additionally, a process for communicating with minor's counsels and their supervisors has been implemented in relation to SB39 objections and releases. This has enhanced Risk Management's ability to receive responses in a timely manner.

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#### IV. Status on the Implementation of the OIR Recommendations

In response to your Board's August 24, 2010 motion, the OIR issued his report citing 11 specific recommendations regarding compliance with SB 39 determinations and reporting. The attached matrix is a summary of each recommendation and the status on the implementation.

Please let me know if you have any questions, or your staff may contact David Seidenfeld, Manager CEO at (213) 974-1457, or via email at [dseidenfeld@ceo.lacounty.gov](mailto:dseidenfeld@ceo.lacounty.gov).

WTF:BC  
DS:RT:ljp

#### Attachment

c: Executive Office, Board of Supervisors  
Auditor-Controller  
Children and Family Services  
Children's Special Investigation Unit  
County Counsel  
Office of Independent Review

OIR.bm

# OFFICE OF INDEPENDENT REVIEW ("OIR") RECOMMENDATIONS

No.	Recommendation	Proposed Action	Timetable
1	Cases in which there have been written representations by DCFS that the child fatality was caused by abuse or neglect should be classified as SB 39 cases subject to disclosure.	<p>Under SB 39, DCFS' initial obligation to release information on child fatalities is triggered when there is a reasonable suspicion that the fatality was caused by abuse or neglect, and the secondary obligation to make a broader release is triggered when the abuse or neglect leads to a child's death and DCFS substantiates the abuse or neglect.</p> <p>The first determination can be triggered if DCFS finds that a report of suspected child abuse or neglect was received concerning the deceased child, DCFS determined that an in-person investigation into the allegation was required and, based upon all the available information, the suspicion is reasonable.</p> <p>The second determination can be triggered when DCFS has substantiated the report of alleged child abuse or neglect which was received regarding the deceased child and concludes that the abuse or neglect resulted in the fatality. This can be evaluated by doing the following:</p> <p>(1) Determining whether the alleged abuse or neglect was substantiated (e.g., check CWS/CMS and CACI-related documents).</p> <p>(2) Carefully drafting and reviewing the DCFS reports concerning the deceased child. If DCFS asserts that abuse or neglect resulted in the fatality, it appears that the SB 39 reporting criteria is met.</p> <p>(3) Obtaining a copy of any original or amended WIC § 300 and § 342 petitions which have been filed to seek jurisdiction over surviving siblings. DCFS should also obtain copies of any WIC § 387 and § 385 petitions which involve the death of another child. In the event that any petition is amended by the juvenile court to add additional counts according to proof, DCFS will need to obtain a copy of the amended petition. In addition to the petitions, DCFS should also get a copy of any accompanying Detention Reports.</p>	Completed

# OFFICE OF INDEPENDENT REVIEW ("OIR") RECOMMENDATIONS

No.	Recommendation	Proposed Action	Timetable
		<p>(4) Obtaining a copy of any reports seeking termination of juvenile court jurisdiction due to the death of a child or any last minute court reports which describe the death of a child.</p> <p>(5) Reading the petitions to determine whether § 300 subdivision (f) has been plead and whether any other subdivision has been plead alleging that the parents caused the death of the deceased child. Similarly, DCFS will need to read the Detention Reports to see if such a link has been reported.</p> <p>(6) Likewise, DCFS must read the reports seeking termination of jurisdiction and any last minute information for court officers to see whether the reports contain a statement that the child death was due to abuse or neglect.</p> <p>As the facts associated with SB 39 determinations may develop over the course of time, DCFS will continue to follow the progress of events and make a holistic assessment of each SB 39 determination. DCFS will also continue to consult with County Counsel when questions arise.</p>	
2	DCFS should develop mechanisms to ensure that if a DCFS official has averred causation between the child fatality and the abuse and/or neglect, a similar finding is made for purposes of SB 39.	In August, 2010, Juvenile Court Services developed and implemented a notification process to inform the Risk Management Division of every petition that is filed for a case in which a child has died for the purpose of conducting a SB 39 determination. Immediately upon receipt of a petition being submitted to Dependency Court, Juvenile Court Services electronically sends Risk Management a copy of their internal notification, the petition that was filed, the investigating social worker's Detention Report, and any other supporting documents.	Completed
3	On a going forward basis, DCFS should adopt a broad approach to any necessary finding of connectivity between the death and the preceding	As recommended, DCFS has adopted a broad approach to SB 39 determinations which include any necessary findings of connectivity between child deaths and the preceding abuse and/or neglect.	Completed

# OFFICE OF INDEPENDENT REVIEW ("OIR") RECOMMENDATIONS

No.	Recommendation	Proposed Action	Timetable
4	In each child fatality in which causation is in issue, DCFS officials should prepare an internal document applying the SB 39 factors to the particular set of facts and explaining why the fatality either was or was not determined to be an SB 39 case	In October, 2010, a determination form was developed in consultation with County Counsel and was immediately implemented. The form allows the analyst to clearly detail the analysis made in concluding the SB39 determination in every child fatality reported to the Department. Subsequent revisions to the form have been made in consultation with County Counsel.	Completed
5	This Board should consider whether the classification of SB 39 decisions should be subject to some sort of audit or independent oversight.	The workgroup recommended that County Counsel conduct quarterly, or as needed, sample evaluations of the SB 39 decisions for a defined period to ensure that they are properly classified. In addition, DCFS staff continue to engage County Counsel staff on an ongoing basis to ensure proper classification. The first quarterly evaluation was completed in April 2011. No set date has been established for the second evaluation. Effective October 2011, a second evaluation by County Counsel commenced and is in process.	Quarterly/Ongoing
6	DCFS should adopt protocols that regularly provide law enforcement and the District Attorney a copy of SB 39 materials subject to disclosure so that a meaningful review may occur.	Risk Management staff has been diligent in preparing SB 39 redacted documents, which are reviewed by County Counsel as soon as a SB 39 Subdivision C determination is made. This allows for approved, scanned redacted documents to be sent electronically to minor's counsel, law enforcement agencies, and the District Attorney's office. This practice allows the three agencies to make a more thorough and educated assessment as to whether any additional redactions are required prior to the release of documents.	Completed
7	DCFS should periodically initiate renewed dialogue with law enforcement and the District Attorney regarding any pending objections to learn if the objections can be removed.	In addition to requesting that the District Attorney and law enforcement contact the Department when they are willing to lift their objections to release, DCFS staff contact the District Attorney and law enforcement on a monthly basis, by telephone and/or by email, to ask if any of the previously withheld	Ongoing

# OFFICE OF INDEPENDENT REVIEW ("OIR") RECOMMENDATIONS

No.	Recommendation	Proposed Action	Timetable
	Any such dialogue should be documented including the status of any law enforcement investigation.	documents can be released. We communicate directly with the law enforcement agency or District Attorney who is investigating/handling each specific case. Effective October 31, 2011, law enforcement is no longer able to request additional redactions of documents and/or object to release.	
8	Each law enforcement agency and the District Attorney should designate a point of contact for DCFS officials responsible for the effectuation of SB 39.	Points of contact have been established with the District Attorney's Family Violence Division, Sheriff's Department Homicide Bureau, and Los Angeles Police Department's Juvenile Division to comply with this recommendation.	Completed
9	When DCFS determines that a child fatality qualifies as subject to SB 39 disclosure, it should in regular course collect and redact information subject to disclosure.	DCFS's Risk Management Division has established procedures that allow for the collecting and redacting of information subject to disclosure. Also, DCFS staff with County Counsel approval forward the approved redacted information to law enforcement agencies and the District Attorney's office to ensure that a meaningful review occurs prior to disclosure.	Completed
10	DCFS should ensure that sufficient resources are devoted to SB 39 analysis and compliance with SB 39 requests.	The CEO and DCFS have assessed the operational requirements for the proposed section to support this function and during the FY 2011-12 Budget process added the positions to the DCFS Budget for which existing vacancies could not absorb the new workload.	Completed
11	The potential disconnect between SB 39 and the Regulations as detailed in this correspondence should be brought to the attention of the State Department of Social Services ("CDSS").	The State is aware of disparities between the language of the SB 39 statute and SB 39 regulations issued by CDSS. Specific disparities were discussed at the CDSS SB 39 Regulations Workgroup on June 7, 2011. The State continues to study ways to address the discrepancies. California Welfare Directors Association (CWDA) is also considering whether to sponsor legislation to refine SB39, which may resolve some or all of the discrepancies. DCFS will continue to bring to CDSS' attention any future disparities.	Completed Note – Effective 10/31/11, regulations were changed and include that law enforcement is no longer able to request additional redactions of documents and/or object to release.

OIR Recs timeline final